

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

v.

MICHAEL BINDAY,
JAMES KEVIN KERGIL and
MARK RESNICK,
Defendants.

Case No. 12 Cr. 152 (CM)
ECF Case

DECLARATION OF MATTHEW J. GAUL

I, Matthew J. Gaul, hereby declare:

I am a partner with the law firm Steptoe & Johnson LLP and represent Defendant Michael Binday in the above-captioned matter. I submit this declaration in support of two motions: (1) DEFENDANT MICHAEL BINDAY'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE 12(B) and, (2) DEFENDANT MICHAEL BINDAY'S MOTION, IN THE ALTERNATIVE, FOR ISSUANCE OF SUBPOENAS TO PURPORTED INSURANCE COMPANY VICTIMS PURSUANT TO RULE 17(C). Attached to this declaration are Exhibits referenced in both of Michael Binday's Memoranda of Law in support of these motions. I make this declaration based on personal knowledge, except where otherwise noted herein.

1. Attached as Exhibit 1 is a schedule of subpoena requests.
2. Attached as Exhibit 2 is a true and correct copy of an excerpt of an insurance contract issued by The Union Central Life Insurance Company that was produced by the Government in the above-captioned matter.

3. Attached as Exhibit 3 is a true and correct copy of an excerpt of an AIG American General memorandum dated May 22, 2006 that was produced as an exhibit to a letter brief in the case *American General Life Ins. Co. v. Ellman Savings Irrevocable Trust*, No. 08 CV 5364 (MLC) (TJB) (D. N.J.).

4. Attached as Exhibit 4 is a true and correct copy of an excerpt of a transcript of deposition testimony of Robert M. Cicchi given on December 14, 2010 in connection with *United States Life Ins. Co. v. Lazar Granhut*, No. 600550/07 (N.Y. Sup. Ct.) that was produced as an exhibit to a letter brief in the case *American General Life Ins. Co. v. Ellman Savings Irrevocable Trust*, No. 08 CV 5364 (MLC) (TJB) (D. N.J.).

5. Attached as Exhibit 5 is a true and correct copy of a memorandum from Lincoln employees Mike Burns and Bob Scheppegegrell dated December 14, 2006 that was produced as a trial exhibit in the case *Sciarretta v. Lincoln Nat. Life Ins. Co.*, No. 11-80427-CIV-MIDDLEBROOKS (S.D. Fl.).

6. Attached as Exhibit 6 is a true and correct copy of the complaint filed on August 2, 2012 in *Lima LS plc v. PHL Variable Insurance Co.*, No. 3:12-cv-01122-WWE (D. Ct.).

7. Attached as Exhibit 7 is a true and correct copy of an email from Lincoln employee Ken Elder dated June 10, 2010 that was produced by the Government in the above-captioned matter.

8. Attached as Exhibit 8 is a true and correct copy of an excerpt of an insurance contract issued by The PHL Variable Insurance Company that was produced by the Government in the above-captioned matter.

9. Attached as Exhibit 9 is a true and correct copy of an excerpt of an insurance contract issued by Security Mutual Life Insurance Company of New York that was produced by the Government in the above-captioned matter.

10. Attached as Exhibit 10 is a true and correct copy of an excerpt of an insurance contract issued by American General Life Insurance Company that was produced by the Government in the above-captioned matter.

11. Attached as Exhibit 11 is a true and correct copy of an excerpt of an insurance contract issued by The Lincoln National Life Insurance Company that was produced by the Government in the above-captioned matter.

12. Attached as Exhibit 12 is a true and correct copy of the complaint filed on June 5, 2012 in *Wilmington Savings Fund Society v. PHL Variable Insurance Co.*, No. CV-12-04926 (C.D. Ca.).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
October 1, 2012

s/ Matthew J. Gaul
Matthew J. Gaul

STEPTOE & JOHNSON LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 506-3900 (phone)
(212) 506-3950 (fax)
mgaul@steptoe.com